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Rep. Brian Hasler
Rep. William Crawford
Rep. Susan Crosby
Rep. John Day
Rep. Craig Fry
Rep. Win Moses
Rep. Peggy Welch
Rep. Vaneta Becker
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Rep. David Frizzell
Rep. Gloria Goeglein
Sen. Patricia Miller, Vice-Chairperson
Sen. Greg Server
Sen. Kent Adams
Sen. Beverly Gard
Sen. Steve Johnson
Sen. Connie Lawson
Sen. Marvin Riegsecker
Sen. Allie Craycraft
Sen. Billie Breaux
Sen. Earline Rogers
Sen. Vi Simpson

LSA Staff:

Barry Brumer, Attorney for the Commission
Ann Naughton, Attorney for the Commission
Al Gossard, Fiscal Analyst for the Commission

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HEALTH FINANCE COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

MEETING MINUTES¹

Meeting Date: October 10, 2000
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., House Chamber
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Charlie Brown, Chairperson; Rep. Brian Hasler; Rep. William Crawford; Rep. Susan Crosby; Rep. Craig Fry; Rep. Peggy Welch; Rep. Vaneta Becker; Rep. Timothy Brown; Rep. Mary Kay Budak; Rep. Gloria Goeglein; Sen. Patricia Miller, Vice-Chairperson; Sen. Greg Server; Sen. Kent Adams; Sen. Steve Johnson; Sen. Connie Lawson; Sen. Allie Craycraft; Sen. Vi Simpson.

Members Absent: Rep. John Day; Rep. Win Moses; Rep. Robert Behning; Rep. David Frizzell; Sen. Beverly Gard; Sen. Marvin Riegsecker; Sen. Billie Breaux; Sen. Earline Rogers.

Rep. Charlie Brown called the meeting to order at 1:10 pm.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

SR 32-2000 Privacy of Personal Health Information

Sen. Steve Johnson introduced the issue of privacy of personal health information stating that privacy issues are changing over time and impacting many types of information in addition to health information.

Rick Cockrum, Anthem, presented three handouts² regarding the federal Graham, Leach, Bliley Financial Modernization Act, the federal Health Insurance Portability and Accountability Act (HIPAA), and current Indiana laws concerning privacy of health information. He stated that the financial impact of the HIPAA regulations concerning privacy is estimated to be 1.5 times that of Y2K. Mr. Cockrum expressed concern that the federal laws and any new state legislation might conflict, stressing the need for states to be cautious about passage of new state privacy laws. He noted the potential for involvement of several states' laws, as well as the federal laws, in a privacy issue of an individual who is insured in one state, lives in another, and is injured in a third. Mr. Cockrum explained that Anthem already approaches privacy issues very seriously, without the impact of the new federal laws, and that compliance with the federal privacy standards alone will be a large project.

Pat Holden, American Insurance Association, presented a handout of her testimony³. Ms. Holden explained that property and casualty insurer privacy is different from that of health insurers. She mentioned that there are several laws and potential pieces of legislation currently in existence and expressed the need for property and casualty insurers to be treated differently from health insurers in application of these laws.

John Gerni, Association of Indiana Life Insurance Companies, stated that life insurers currently follow certain principles regarding privacy, without regulation. Mr. Gerni presented four principles currently followed: (1) medical information is obtained from third parties only with authorization and for certain purposes; (2) medical information is not shared for marketing purposes; (3) medical information is not shared with a financial company for any reason, (4) upon request, individuals may learn of any disclosure of the individual's medical information to third parties.

In response to a question from Rep. Brown, Mr. Gerni stated that medical information is not released without the express consent of the individual except for use of the information in the business of insurance. In response to a question from Rep. Crawford, Mr. Gerni stated that a consumer may request to know whether health information has been shared by an insurer for any purpose and an insurer must inform the consumer of disclosure of the consumer's health information.

Kim Stoneking, Indiana Association of Insurance and Financial Advisors, and Indiana Health Underwriter's Association, expressed support for current protections provided by life and health insurers that do not disclose personal health information without written consent. He stated that the National Association of Insurance Commissioners (NAIC) model regulation requires written consent and contains exceptions to this requirement.

Jerry Malooley, Indiana Chamber of Commerce, introduced Christopher Schrader, Inter Art

²See Exhibit 1.

³See Exhibit 2.

Distribution. Mr. Schrader presented a copy of his testimony⁴. He stated that there is an erosion in the sense of privacy in the United States. He mentioned the requirements placed on human resources personnel in relation to privacy of information and discussed meeting the reasonable expectations of employees and insureds. He informed the Commission that his experience is that insurers currently refuse to provide any information regarding insured employees to employers.

Sally McCarty, Commissioner, Indiana Department of Insurance, presented information about federal laws regarding privacy including Graham, Leach, Bliley and HIPAA⁵. Ms. McCarty stated that the NAIC model regulation was adopted due to the absence of implemented federal rules. She stressed the need for uniformity of treatment and adequate protection of personal health information. She noted that the NAIC model and the Graham, Leach, Bliley requirements are complementary. Ms. McCarty stated that consumer notice of privacy policies is required and that protected health information is treated differently from financial information.

In response to a question from Rep. Crawford, Ms. McCarty stated that she is unaware of any complaints by consumers to the department about inappropriate use of personal health information by insurers. Rep. Brown requested that Ms. McCarty look at complaints records to verify this, which Ms. McCarty agreed to do.

In closing, Sen. Johnson noted that health insurance is the only industry that he has identified in which the consumer and the customer are two different people. He explained that managed care methods have attempted to change the health insurance/care paradigm, manage cost, and provide preventive care and treatment, but that it seems insurers have had insufficient funds to deal with wellness issues. He stressed the importance of developing good public policy to improve the health status of citizens, pointing out that the government is responsible for 10 to 15% of health care costs through publicly funded health insurance programs. He stated that there is a need for a definition of the rights of the customer to privacy, and the rights of the payor to know what is being paid for and to control costs.

SCR 13-2000, Health Insurance Mandates

Sen. Johnson stated that a significant portion of Indiana's health insurance mandates require coverage of preventive care. He expressed his belief that insurers have not found the money to pay for preventive care, so consumers have demanded mandates. He stated that he believes that it is important to develop a methodology for gathering sufficient information regarding the effects of mandates on which to base legislative decisions in the future.

Rick Cockrum, Anthem, stated that mandated coverage presents many issues to be evaluated. He noted two different studies regarding mandates that concluded that mandates put a state at a disadvantage in attracting business, and that mandated benefit costs are eventually borne by workers with the effect of decreased benefits, increased costs, and increased copayments. Mr. Cockrum discussed three areas affected by government imposed insurance mandates including: (1) effects on the uninsured; (2) effects on quality; and (3) effects on technology. He stated that quality guidelines of

⁴See Exhibit 3.

⁵Information contained in Ms. McCarty's testimony is available in Exhibit 4.

insurers are sometimes ahead of mandates, and that mandates that are too specific can actually cause an insurer to cover services that are not necessarily the best science. He noted the consequences to research and development when original research is disputed after a mandate becomes law and the mandated service may actually cause harm because the mandated service was not sufficiently proven, or is outdated. Mr. Cockrum described the correlation between the cost of insurance, and the rate of uninsured stating that for every 1% cost increase there is a 2% increase in the number of uninsured individuals.

In response to questions from Rep. Becker and Rep. Crosby, Mr. Cockrum stated that: (1) the diabetes management mandate had increased costs; and (2) consumers tend to want additional benefits until the cost to the consumer reaches a certain point at which the consumers tend to decline the additional benefits.

Sen. Miller noted that, when considering legislation containing a mandate, legislators are presented with conflicting information regarding cost of the mandate. She asked if there is a set of criteria that are used by other states to determine the cost of a mandate. Sen. Miller asked that staff explore this issue.

In response to questions from Sen. Miller, Rep. Budak, and Sen. Craycraft, Mr. Cockrum stated that; (1) National Conference of State Legislatures may have information regarding other states that have a methodology for evaluating costs of mandates; (2) consulting firms hire actuaries to provide independent analysis; (3) the purpose of developing a methodology would be to remove the emotion from the debate regarding mandates and provide a cost/benefit analysis for all citizens of Indiana; (4) insurance provides a way to spread risk and the effect is that the healthy subsidize the ill; and (5) similar to group insurance coverage, individuals in the individual insurance market are placed in a pool with other individual insureds with the effect of risk spreading.

Cris Fulford, Indiana Task Force on Health Care Issues, and Council of Volunteers and Organizations for Hoosiers with Disabilities, presented a handout of her testimony⁶. Ms. Fulford expressed concern regarding the effect on consumers of a new methodology for evaluation of mandates.

Dave Certo, Insurance Institute of Indiana, presented two handouts containing Virginia and Ohio statutes regarding insurance mandate evaluation⁷. He explained that: (1) the Ohio statute, which requires the hiring of an actuary, is not yet effective; and (2) the Virginia statute, which requires evaluation by a commission, has been in effect for approximately ten years. Mr. Certo encouraged the Commission to support an independent fiscal analysis of insurance mandates. He discussed different ways of providing insurance and stressed the growing cost of health insurance coverage.

In response to a question from Rep. Charlie Brown regarding the time required to comply with the requirements in the Ohio and Virginia statutes, Mr. Certo stated that the Ohio statute is not yet effective, so the timeline is unknown, and that he believes that in Virginia, bills may be carried from one legislative session to the next, so the required evaluation is part of an ongoing process.

In response to a question from Sen. Miller, Mr. Certo stated that he did not research the

⁶See Exhibit 5.

⁷See Exhibit 6.

effect that the Virginia statute has on the passage of laws in Virginia. Sen. Miller asked that staff provide this information.

Rep. Fry expressed his belief that it is difficult to obtain an independent review of the cost/benefit of insurance mandates. He stated that independent reviews that have been presented to him have been funded by insurance companies, which creates doubt that the reviews are unbiased. Rep. Fry voiced concern that cost/benefit analyses would be biased in favor of insurers, and would not provide objective information on which to base a legislative decision that affects the individual citizens of Indiana.

Jerry Malooley introduced David Wulf, Templeton Coal Company and Laurel Short, Construction Control Corporation, to testify.

Mr. Wulf presented a handout of his testimony⁸. He briefly described the company structure, including employee benefits and stated that employers frequently expand benefits prior to the benefit being mandated because the benefits are shown to be important, or are necessary to maintain good employees. He stated that maintaining satisfaction among investors, customers, and employees becomes increasingly difficult with increased costs and regulation. Mr. Wulf noted that mandates are of little benefit if resulting increased costs cause the number of uninsured individuals to rise. He expressed his support of the General Assembly adopting a new methodology for cost/benefit analysis of proposed insurance benefits.

In response to questions from Sen. Simpson and Sen. Miller, Mr. Wulf stated that: (1) employers negotiate benefits with insurers, not with employees unless the employees demand different benefits; and (2) general claims expenses are provided to his company by insurers, but specific claims information is not provided.

Mr. Short described the differences in providing health insurance benefits as a small employer ten years ago, when he saw more competition, and today. He stated that he was able to easily change insurance carriers ten years ago and that today that is very difficult. He explained that every mandated insurance benefit has a price, and some are very high. Mr. Short stated that health insurance costs for his company rose 35% last year, and 50% this year, and that the insurers made money from covering his company's employees during those two years. He stated that insurers no longer seem interested in insuring small companies. Mr. Short explained that he needs tools to negotiate benefits for the employees of his company, including detailed paid claims data and information on the impact of mandates on small business. In response to a question from Sen. Miller, Mr. Short stated that the insurer will not provide an explanation for the increased costs of 50% this year. He stated that the insurer had a positive cash flow, but it was not passed on to his company in decreased costs.

Ron Wuensch, Indiana Optometric Association, stated that each time a mandate comes along there are actuarial studies. He expressed his disbelief that increased detail in the actuarial studies will provide any increased benefit, but that he does believe that it will slow down the process. Mr. Wuensch stated that companies with the greatest resources will benefit most from actuarial studies, and that individuals cannot pay for such studies to refute the studies that will be financed by the companies.

Steve McCaffrey, Mental Health Association of Indiana, made comments based on his experience with mental health parity legislation. He stated that increased information

⁸See Exhibit 7.

regarding costs/benefits is needed, and that there will inevitably be questions regarding reliability of the results, based on who is paying for the information.

Sally McCarty, Commissioner, Indiana Department of Insurance, stated that mandates do have an effect on premium rate increases, but that her recollection is that the main reason that insurers give for increased premium rates is increased utilization, especially with regard to prescription drugs advertised by manufacturers. Ms. McCarty stressed that the actuaries with whom the Department contracts for other purposes are extremely expensive and that the Department will not take a position on the proposal for a methodology of cost/benefit analysis of mandates. In response to a request from Sen. Miller, Ms. McCarty stated that she could provide informal information regarding reasons that insurers give for increased premium rates.

In closing, Sen. Johnson stated that costs of any mandate, including mandates that the legislature places on entities other than insurers, are ultimately borne by consumers. He stated that the purpose of insurance is to spread risk, but that it is increasingly seen as a means of making payment and protecting assets, rather than of spreading risk. Sen. Johnson expressed his belief that public policy should be made based on the best available information. He compared the approach to the budget process stating that disagreements in the budget process do not occur with regard to numbers, but rather with regard to how to allocate funds according to the numbers provided.

Rep. Charlie Brown presented a handout regarding disparities in prescription drug costs in different locations, expressing concern about the cause of the disparities.

Rep. Brown explained that the Commission's final report and any drafts of proposed legislation will be considered at the Commission meeting on Oct. 24, 2000.

The meeting was adjourned at approximately 3:45 pm.